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Grand Rapids, Michigan

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October 23, 2018

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8:35 a.m.

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P R O C E E D I N G S

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*(Judge, jury, counsel, and parties present in the
courtroom)*

7 THE COURT: All right. Please be seated. Welcome
8 back everyone. This is -- I haven't even counted up the days,
9 but it is the day that definitely you, the jury, will get the
10 case. And so I'm not going to spend any more time than we need
11 to to finish up in court this morning. I have a few minutes'
12 worth of instructions that will complete the set, and then
13 after that we will proceed to put the case in your hands and
14 get you the equipment you need, and, of course, the exhibits.
15 I think the equipment was in there already this morning? Okay.
16 Good.

17 So let's go to the last bit of instructions. I
18 earlier concluded the part of my instructions explaining the
19 rules for considering some of the testimony and evidence. Now
20 let me conclude by discussing your deliberations in the jury
21 room and your possible verdicts.

22 The first thing that you should do in the jury room
23 is choose someone to be your foreperson. This person will help
24 guide your discussions and will speak for you here in court.

25 Once you start deliberating, do not talk to the jury

1 officer or to me or to anyone else except each other about the
2 case. If you have questions or messages, you must write them
3 down on a piece of paper, have your foreperson then give them
4 to the jury officer, the officer will give them to me, and I
5 will respond as soon as I can. I may have to talk to the
6 lawyers about what you have asked, so it may take me some time
7 to get back to you.

8 And I'm going to go off-script and amplify this a
9 little bit because I find that jurors don't often understand
10 the process we'll use. So if you have questions, follow that
11 procedure. I'll check with the lawyers, and when I have an
12 answer, I'm going to bring you back into court so that I can
13 give you the answer here in court all together just so that
14 everybody hears everything I'm saying to you in open court just
15 like all the evidence. That's why sometimes it takes a little
16 while to get back and respond to your questions. But that's
17 what the process will be.

18 And then returning to the script: Any questions or
19 messages normally should be sent to me through your foreperson.

20 I will give you the paper and electronic exhibits
21 admitted into evidence to review in your jury room. If you
22 want to see any of the other exhibits that were admitted in
23 evidence, you may send me a message, and I will arrange for you
24 to see them.

25 One more thing about messages. Do not ever write

1 down or tell anyone how you stand on your votes. For example,
2 do not write down or tell anyone that you're split 6 to 6 or
3 8 to 4 or whatever your vote happens to be. That should stay
4 secret until you are finished.

5 Remember that you must make your decision based only
6 on the evidence that you saw and heard here in court. Do not
7 try to gather any information about the case on your own while
8 you're deliberating. For example, do not conduct any
9 experiments inside or outside the jury room. Do not bring any
10 books like a dictionary or anything else with you to help with
11 your deliberations. Do not conduct any independent research,
12 reading, or investigation about the case. And do not visit any
13 of the places that were mentioned during the trial. That
14 personal visit is probably unlikely in any event, but what's
15 not unlikely in today's day and age is that one or more of you
16 is here with a web browser on your phone, and if you're like a
17 lot of people, your natural inclination is to find out about
18 the world with that web browser. It's a natural thing and it's
19 the way we ordinarily deal with our life in today's world, but
20 it's not the way you may function as jurors. And I want to
21 emphasize that. When you go back to that deliberation, you
22 have to rely only on the evidence you heard here in court, only
23 on the admitted exhibits, and you can't go out and research
24 even on those tools that all of us have learned to use in our
25 daily life. Make your decision based only on the evidence you

1 saw and heard here in court.

2 Your verdict, whether it is guilty or not guilty,
3 must be unanimous. To find a defendant guilty, every one of
4 you must agree that the government has overcome the presumption
5 of innocence with evidence that proves the defendant's guilt
6 beyond a reasonable doubt. To find the defendant not guilty,
7 every one of you must agree that the government has failed to
8 convince you beyond a reasonable doubt. Either way, guilty or
9 not guilty, your verdict must be unanimous.

10 Now that all the evidence is in and the arguments are
11 completed, you are free to talk about the case in the jury
12 room. In fact, it is your duty to talk with each other about
13 the evidence and to make every reasonable effort you can to
14 reach unanimous agreement. Talk with each other, listen
15 carefully and respectfully to each other's views, and keep an
16 open mind as you listen to what your fellow jurors have to say.
17 Try your best to work out your differences. Do not hesitate to
18 change your mind if you are convinced that other jurors are
19 right and that your original position was wrong. But do not
20 ever change your mind just because the other jurors see things
21 differently or just to get the case over with. In the end your
22 vote must be exactly that: Your own vote. It is important for
23 you to reach unanimous agreement, but only if you can do so
24 honestly and in good conscience.

25 No one will be allowed to hear your discussions in

1 the jury room and no record will be made of what you say, so
2 you should all feel free to speak your minds. Listen carefully
3 to what the other jurors have to say and then decide for
4 yourself if the government has proved the defendants guilty
5 beyond a reasonable doubt.

6 If you decide that the government has proved a
7 defendant guilty, then it will be my task to decide what the
8 appropriate punishment should be. Deciding what the punishment
9 should be is my task, not yours. It would violate your oaths
10 as jurors to even consider the possible punishment in deciding
11 your verdict. Your job is to look at the evidence and decide
12 if the government has proved a defendant guilty beyond a
13 reasonable doubt.

14 I've prepared verdict forms that you should use to
15 record your verdict. There is a separate verdict form for each
16 defendant. If you decide that the government has proved one or
17 more of the charges against a defendant beyond a reasonable
18 doubt, say so by having your foreperson mark the appropriate
19 places on the form. If you decide that the government has not
20 proved one or more of the charges against a defendant beyond a
21 reasonable doubt, say so by having your foreperson mark the
22 appropriate places on the form. After you have reached a
23 verdict on each defendant, your foreperson should then sign and
24 date the forms and then send a note to me letting me know that
25 you have reached a verdict. Your foreperson will bring the

1 signed forms into court and deliver them to me here.

2 Remember that each of the defendants in this case are
3 only on trial for the particular crimes charged in the Second
4 Superseding Indictment. Your job is limited to deciding
5 whether the government has proved the crimes charged. And also
6 remember that whether anyone else should be prosecuted and
7 convicted for these crimes is not a proper matter for you to
8 consider. The possible guilt of others is no defense to a
9 criminal charge. Your job is to decide if the government has
10 proved each individual defendant guilty, and do not let the
11 possible guilt of others influence your decision in any way.

12 Remember that if you took notes during the trial,
13 your notes should be used only as memory aids. You should not
14 give your notes greater weight than your independent
15 recollection of the evidence. You should rely upon your own
16 independent recollection of the evidence or lack of evidence
17 and should not be unduly influenced by the notes of other
18 jurors. Notes are not entitled to any more weight than the
19 memory or impression of each juror. Your notes, of course, are
20 not evidence. Whether you took notes or not, each of you must
21 form and express your own opinion as to the facts of the case.

22 Let me conclude by repeating something that I said to
23 you earlier. Nothing that I have said or done during this
24 trial was meant to influence your decision on the facts in any
25 way. You decide for yourselves if the government has proved

1 the defendants guilty beyond a reasonable doubt.

2 And that's the end of the instructions, a copy of
3 which you'll get, along with the verdict forms, one for each
4 defendant, and the electronic and paper exhibits I talked to
5 you about.

6 At this point we're going to excuse the jury to the
7 jury room, and we're going to call our officers forward in a
8 minute to be sworn to keep the jury secure. So are they here
9 and ready? All right.

10 And then the other thing we have to do is formally
11 separate the jury from the alternates. So jury service is
12 hard. Alternate jury service is uniquely hard because after
13 sitting here for over two weeks just like everybody else,
14 faithfully listening and preparing for the case, the alternate
15 jurors still can't unload. They still can't deliberate and get
16 to the point of what I think is relief for most jurors, the
17 opportunity to actually discuss the case with each other. They
18 are in effect understudies like you were on a show on Broadway,
19 and they have to continue in that role separate from the
20 regular jury, the regular performers if you're in a Broadway
21 show, unless and until they are called upon to take the part of
22 one of the regular jurors who can't finish the job for some
23 reason. As occasionally happens.

24 So we're going to have the alternate jurors brought
25 to a different part of the building. We did hopefully arrange

1 so that you've got some options for entertainment, video or
2 otherwise, so that you don't have to just sit there quietly as
3 the jury is doing its work. But, of course, what you do will
4 be up to you, as long as you can do it in that jury room.

5 If the jury comes back for a question, as sometimes
6 they do, then we'll bring the jurors that are the alternate
7 jurors back here so that they can hear the question and the
8 answer along with everybody else. That way in case you're
9 called in just like an understudy, you'll be ready with all the
10 information that the regular jury has.

11 So our alternate jurors are Ms. Robinson and
12 Ms. Stewart in seats 7 and 14. Once these officers are sworn,
13 we'll bring you all back, you can gather your things, make sure
14 you get your lunch order in, and then the regular jury will go
15 to work.

16 So these are the individual officers who are going to
17 deal with the protection of the jury, keeping it quiet and
18 separated from all of us so that we don't hear and so that the
19 notes can go back and forth. And we'll have these two
20 individuals sworn now. Because as you've seen, whenever people
21 in court undertake to do something, they take an oath or an
22 affirmation to do it according to law.

23 So go ahead, whether it's Ms. Bourque or Mr. Schmidt,
24 swear these officers.

25 *(The jury officers were administered the oath)*

1 **THE COURT:** All right. Then we will be in our
2 recess, and we will await word from the jury.

3 *(Jury exited the courtroom at 8:46 a.m.)*

4 **THE COURT:** All right. Anything else from counsel?

5 **MR. BAKER:** Not from the government, Your Honor.

6 Thank you.

7 **THE COURT:** From defense counsel?

8 **MS. CHARTIER:** No, Your Honor.

9 **MS. HOWARD:** No, Your Honor.

10 **MR. LOMBARD:** No, Your Honor.

11 **THE COURT:** Okay. Please make sure we do have a way
12 to contact you. Hopefully you can all stay around the building
13 for at least an hour or so to get the jury settled in to see if
14 they have any early questions, and then we'll keep you posted
15 on developments.

16 I think all the exhibits were prepped and ready as of
17 yesterday. So I said yesterday what I often say as the jury
18 leaves, so I won't repeat it other than to say I really think
19 this went a lot better than I thought it would. From my
20 perspective people were expected to be prepared, but not only
21 prepared but be focused on the issues and themes that mattered
22 to your respective clients. And we'll see what the jury does,
23 but I don't think anybody could be disappointed or feel like
24 their issue was not fairly presented to the jury and done, in
25 my view, in a very effective way by all counsel. So that's the

1 best I can hope for in a trial process. That through the
2 advocacy of skilled people like we have here, the issues get
3 thoroughly vetted. And I'm going to be as interested to see
4 how things go as I know you will. So we'll see you later
5 today.

6 **MR. PHELAN:** Thank you, Your Honor.

7 **THE CLERK:** Court is in recess.

8 *(Recess taken at 8:48 a.m.)*

9 *(Back on the record at 9:30 a.m.)*

10 **THE COURT:** I did get a note, and I think this might
11 just have been my oversight in the housekeeping, but I'll read
12 it to you and show it to you. "On the jump drive how do we
13 know which calls and videos correspond to a defendant? Are we
14 allowed to know? They are not labeled by name or date, only
15 exhibit. Is there a guide to each call/video exhibit?" So
16 take a look at that.

17 I had thought when we talked about the drives the
18 parties were going to have an index of some kind that put the
19 dates and at least the government's view of what they represent
20 are on the exhibits. And that must not have been in the book.
21 Or if it is, I'm not finding that. Is there a way to get that?
22 And do the defendants have anything they may want to say about
23 it? And have the defendants done that for their thumb drive?

24 **MR. BAKER:** We did talk about it, Your Honor. We are
25 in the process of preparing it. It wasn't in the book that

1 went back yesterday. We will get it to the Court.

2 *THE COURT:* All right.

3 *MR. BAKER:* And it will -- just for everyone's
4 basis -- the way they are saved on there is by target phone and
5 by number. And we could get a date. And it's up to each of
6 the defendants here, but we could then define the speakers,
7 just the headers from each one, in terms of the index. The
8 header of each one of our transcripts was target phone number,
9 call number, date, time, to and from in terms of who the
10 speakers were.

11 *THE COURT:* All right. Ms. Chartier.

12 *MS. CHARTIER:* We did have an index for our two, but
13 I can actually send an email if the Court -- I don't know if
14 anyone would be willing to print it out. So the first call
15 would relate to allegedly Mr. Castro and then the second would
16 be for Mr. Tatum, the video.

17 *THE COURT:* I think with the volume of information
18 they need to have some guide, and I thought they were going to
19 have it. I would just want to tell them -- I'll bring them in
20 in a minute -- the guide they are going to get is just meant to
21 be, in the case of the government's thumb drive, the
22 government's version of what's on there. They still have to
23 make that judgment, of course. And in the defense case the
24 same thing. But I don't want them to get the idea that the
25 exhibit list or document is evidence, but it certainly is, I

1 think, an essential guide.

2 **MR. LOMBARD:** Your Honor, I wouldn't want -- I would
3 like to see the proposed guide.

4 **THE COURT:** Right. Absolutely.

5 **MR. LOMBARD:** I don't want to see -- I don't think
6 there should be the timestamp -- the call is a timestamp. I'm
7 not sure how the time actually gets on the call. How they
8 could take that information.

9 **THE COURT:** All right. I think what he's
10 referencing, Mr. Baker, is the information that was on the
11 header of the transcripts identified as the government's
12 interpretation of what the call was.

13 Do you have objections to that, if I remind the jury
14 that it's not evidence, it's simply their government version of
15 what they are listening to?

16 **MR. LOMBARD:** I want to see. In hindsight in the
17 case, Your Honor, I probably should have objected to the
18 transcripts with the headers that were put up there because I
19 think it's misleading to the jury. So that's what I'm
20 concerned about. That they have an exhibit that reflects the
21 headers that were put up there necessarily. That's the
22 problem. And I probably should have objected to it and I
23 didn't from the very beginning.

24 **THE COURT:** All right. Mr. Baker.

25 **MR. BAKER:** Your Honor, in response to that, in terms

1 of the timestamp and the date, there was testimony in open
2 court in the foundation of the wire about the pen register trap
3 and trace, the manner and the technique the DEA used.

4 From the government's perspective -- and it wasn't
5 objected to, but I think it would be admissible, that
6 information would be admissible as the product of a court order
7 through the process which the wire ran. That's not even an
8 assertion with regard to who was saying what or when. That's
9 simply a portion of the digital evidence that came in. So
10 that's what we would include.

11 I think the other issue that we would include from
12 the government's perspective is the speakers on the call, and
13 that is obviously for the jury to consider, but they want to
14 consider do we believe this is the speaker on this call.
15 That's their determination. But some indication of who the
16 government proposes that it is I think might be helpful in
17 deliberations.

18 *THE COURT:* Okay. Anybody else at the defense side
19 want to be heard? (No response).

20 Okay. All right. What I would propose to do is
21 bring the jury in, I'll tell them that we're in the process of
22 having what amounts to a table of contents or index prepared,
23 and I'm not sure I'm going to fine tune whether it's the date
24 and timestamp that may have evidentiary support or the names or
25 anything like that. I'm just going to tell them it's not

1 evidence any more than their notes are evidence. It's simply
2 intending to be a guide to the evidence, and they can accept it
3 or reject it as they like based on the evidence they have
4 heard. But that I certainly agree they should have some method
5 by which to get some order on the information that they are
6 asked to review.

7 I do think before anything goes back there from
8 either side I want you to vet it together, and if you have a
9 disagreement about it, let me know and we'll convene. But my
10 view of what Mr. Lombard said is that as long as it's only the
11 information that was in that header and I give the jury --
12 remind them of the instruction that that's not evidence, I
13 think the concerns that he expresses are adequately handled.
14 So that would be my ruling on that. But if you see something
15 else that you think is problematic --

16 *MR. LOMBARD:* Yes, Your Honor. And I don't think --
17 I mean, that's the purpose of an exhibit list. Something
18 similar to that is a guide, but something a little bit more
19 than that is more than a guide.

20 *THE COURT:* Let's see if there's -- when you see what
21 they actually have -- a problem. And if there is, we'll
22 convene. But that's what I intend to tell the jurors now. And
23 we'll bring the alternates in so they can hear it as well.

24 Anything else before we bring in the jury? (No
25 response). Okay. Let's do that, then.

1 *(Jury entered the courtroom at 9:38 a.m.)*

2 **THE COURT:** All right. Welcome back. Please be
3 seated. We're joined now by the jury and the alternates. And
4 I have a question from the jurors. I'll just read it so that
5 the alternates can hear it as well. "On the jump drive how do
6 we know which calls and videos correspond to a defendant? Are
7 we allowed to know? They are not labeled by name or date, only
8 exhibit. Is there a guide to each call/video exhibit?"

9 So I had thought when we sent the materials back that
10 there would be some kind of an index for you, because there
11 should be. There should be an index that gives you some
12 meaningful way to target the information as you go. And it
13 turns out that that's in process with the lawyers right now,
14 okay? So they are finalizing that.

15 What I do want to highlight for you is that when it's
16 ready, we'll deliver it back to you, but you need to
17 understand, just like your notes or anything else, that exhibit
18 list or that guide is not evidence in and of itself. It's
19 simply a party's version of a guide or table of contents to
20 what's there. And you need to make your own judgment. And as
21 you've heard from the arguments, in some cases the parties
22 disagree about what is on that tape. Okay? So when you get
23 it, the only thing you should use it for is as an index or a
24 guide that I hope will give you meaningful information. I'm
25 sure you didn't all memorize the exhibit numbers along the way.

1 But that's what we're going to do. I had thought it
2 was done already, but I was wrong about that. So it's in
3 process. And it may take a few minutes to get that. And we'll
4 get one for the defense exhibits too if you haven't had it, so
5 that in both cases you have a meaningful guide or index. And
6 if you use it only for that purpose, it's fine. And then you
7 make your own judgments about what you're listening to, what
8 you're seeing, and all the rest. So if that is responsive, I
9 hope it is, as soon as I have it, I'll bring it back to you.
10 If there's anything else you need or if I missed the point of
11 your question, let me know with another question. Okay? And
12 then we'll excuse you now. Thank you.

13 *(Jury exited the courtroom at 9:40 a.m.)*

14 **THE COURT:** Anything else from counsel?

15 **MR. BAKER:** No, Your Honor, we'll be back in touch as
16 soon as possible.

17 **THE COURT:** Okay.

18 *(Recess taken at 9:41 a.m.)*

19 *(Back on the record at 10:54 a.m.)*

20 **THE COURT:** All right. We're back on the record, and
21 I understand that the parties have a disagreement over the
22 index. I have in front of me what the government is proposing,
23 I think. Is that right, Mr. Baker?

24 **MR. BAKER:** You're right, Your Honor, and the Court
25 is lucky enough to be the one person here with a printed copy

1 of it. We've already looked at it visually.

2 **THE COURT:** James, why don't you put this on the
3 document camera so we can all look at it together. Thanks.

4 Go ahead. You can start talking about the issues.
5 And if you want to introduce what you think it is, Mr. Baker,
6 and then we'll go to any defense objections.

7 **MR. BAKER:** Thank you, Your Honor. I think by and
8 large we've been through all the exhibits from both sides and
9 we are in agreement. I'm sorry it took us a little time, but
10 we wanted to make sure that both sides were agreeing on that.
11 The dispute on this document here, you can see it's a
12 spreadsheet. The exhibit number is in the first column, the
13 date of the call or the text message is in the second, the
14 timing of the call or the text message, the target phone it was
15 intercepted from, the from and to of the direction of the
16 communication, and then it has a call or text column and a call
17 or text number. The dispute between the parties, Your Honor,
18 is that -- and I'll let the defense speak for themselves -- but
19 I believe there's an objection to including the texts. The
20 texts themselves are actual evidence back with the jury right
21 now in Government Exhibit 8A.

22 From the government's perspective the importance of
23 this index of the communications is in aid of the jury for the
24 chronology. They are getting the information in sequence in
25 terms of the timing. And to leave out the text message between

1 the parties that are communicating at that time would not give
2 a picture of when the evidence was presented for those times.
3 Obviously the information here is up to the jury in terms of
4 determination, in terms of who is communicating, but the timing
5 of the communication of the exhibit, I believe, is important
6 for the information that was presented in court, and that's why
7 the government believes the texts should be included in this
8 index that goes back.

9 We have a separate index for both the physical and
10 pictured exhibits from the government and from -- and for the
11 video, and for the defense for the same sorts of exhibits, and
12 we've agreed as to those.

13 *THE COURT:* Are the texts on the thumb drive or not?

14 *MR. BAKER:* They are not, Your Honor.

15 *THE COURT:* All right. Thank you.

16 Go ahead, Mr. Lombard.

17 *MR. LOMBARD:* Thanks, Your Honor. Thank you. Our
18 position is that only the index of the calls should go back. I
19 understand why Mr. Baker did it this way, because you want the
20 chronology, and the texts themselves are already back there,
21 but they want an index for the thumb drive. And in response to
22 the jury's question, we should just give them an index to the
23 thumb drive. I don't think we need anything other than the
24 exhibit number, from, to, and I think that's it. The rest of
25 the information I don't think is necessary.

1 You know, this is -- they sat through here, they
2 heard the evidence, they have the calls. And we need to be
3 careful that we're not giving them anything that -- I know,
4 Judge, you gave them the instruction that their memory and
5 their interpretation of the evidence is what matters, but we
6 certainly don't want to influence in any way at this point
7 whatsoever with anything we introduce to them. So as careful
8 and limited as possible I think is the best approach.

9 *THE COURT:* All right. Any other defense counsel
10 want to be heard?

11 *MS. CHARTIER:* I concur with Mr. Lombard. I do
12 object to the text messages going down there. Again, I think
13 this chronology is -- this is more of a summary exhibit the
14 government wants to put back there as opposed to just an index,
15 which is what the jury requested as it relates to the calls.
16 And for that reason I think it's improper.

17 *THE COURT:* All right. Anybody else?

18 *MR. HILLS:* I would agree. This looks more like a
19 summary exhibit to me as opposed to what the exhibit number is
20 and maybe to -- who it's from and to.

21 *THE COURT:* All right. Anybody else?

22 *MR. LOMBARD:* And, obviously, Your Honor, if we
23 resolve it here, was the Court just going to send it back or
24 was the Court going to bring them back in?

25 *THE COURT:* It depends a little bit on how I resolve

1 it.

2 **MR. LOMBARD:** Because I do -- I know the Court
3 advised them -- I would like them to be advised when it's given
4 to them that because it says "Castro" where it should be -- you
5 know, our position is "Source of supply," that's a distinction
6 that I think everyone knows, that we're disputing that we're
7 the source of supply, but just to remind them, I would feel
8 more comfortable.

9 **THE COURT:** All right. Anything else? Any response,
10 Mr. Baker?

11 **MR. BAKER:** Your Honor, I do feel like this exhibit
12 needs to have the date and time. I know that the defense is
13 objecting to that from the comments right here.

14 Without the date and time, I don't know that it's
15 useful to the jury, and it's not responsive to their request.
16 Also for that same reason, I think that the chronology, which
17 is really all that's reported here, in addition to the proposed
18 names from the government's perspective.

19 **THE COURT:** All right. And then do the parties have
20 agreement on an index or whatever you want to call it for the
21 other exhibits?

22 **MS. CHARTIER:** Yes, Your Honor.

23 **MR. BAKER:** We do, Your Honor, from both sides.
24 We've consulted. That's one of the things that took us a
25 little bit of time, but -- to come to conclusion, but I think

1 they are very neutral.

2 *MR. LOMBARD:* That is true, Your Honor. I did put in
3 the exhibits referring to Mr. Castro in the communications
4 where there were source of supply communications. It does say
5 "Alex Castro," and that's why I'm asking the Court to give that
6 instruction that their memory and -- this is not evidence. The
7 instruction the Court gave.

8 *THE COURT:* All right. Okay. Well, I think the
9 texts ought to come off this exhibit, because what they are
10 looking at and asking for is an index of the thumb drive. And
11 the thumb drive doesn't include the texts. The texts are
12 separate. And I think the only thing that can properly go back
13 is some kind of an index for the calls themselves that are on
14 that thumb drive to guide them through. And they will have to
15 make their own way in terms of lining up the calls and the
16 texts and the other exhibits. But I think an exhibit list that
17 the parties have agreed on, along with this, will give them the
18 tools they need in a neutral way to walk through the evidence
19 and then draw their own conclusions.

20 Personally I don't have any problem with the date and
21 time. I do think there was evidentiary foundation for that
22 actually when we were playing the calls in court. And the to
23 and from is definitely government interpretation in most cases.
24 Not all. There are some stipulations. But I don't think I
25 need to instruct them again. I think when I instructed them

1 when they were out here the last time I made it clear they
2 would be getting this information but it would simply be the
3 interpretation of the submitting party as to what it meant and
4 it would be up to them to make a decision. I think I even
5 expressly indicated that there were some disagreements between
6 the parties. I don't think I singled out Mr. Castro, but I did
7 emphasize disagreements. And so I think they have already been
8 instructed on it. And if the document is revised to exclude
9 the texts, I think that can go back with the other index and
10 they will have the tools they need.

11 **MR. LOMBARD:** Your Honor, just briefly, this
12 call/text number on the far -- I mean -- and the target phone
13 numbers, I mean, I just think it's -- I don't know that it
14 really aids them in understanding that information.

15 **THE COURT:** Well, I'm sure they will take the text
16 off. The call number is really redundant to some extent of the
17 exhibit number, but I think the target phone is important to
18 walk them through what's on the thumb drive since it's
19 organized by target phone as is exhibit numbering. Since the
20 middle digit in all of the exhibit numbers is the target phone.
21 So I don't know that it adds much to it, but it certainly --
22 and I guess there's another exhibit in evidence actually now
23 that I think of it that identifies the target phone, so it
24 would be useful to give everybody a clear idea of what they are
25 looking at. So I think those can stay. But the text

1 references should be omitted.

2 Ms. Howard.

3 *MS. HOWARD:* Your Honor, we realize that we did not
4 send back Defense 5, so I brought extra copies of that too.

5 *THE COURT:* I don't remember what Defense 5 is.

6 *MS. HOWARD:* It's a picture of Ray Lee. I've shown
7 the government already.

8 *THE COURT:* Okay. All right. So we'll put that back
9 when we get the other items to submit.

10 *MS. HOWARD:* Thank you, Your Honor.

11 *THE COURT:* Okay. Is there anything else now?

12 *MS. CHARTIER:* So did you send back the government
13 exhibit list and the defense exhibit list that we agreed on
14 already?

15 *MR. BAKER:* I did not, Your Honor, and the reason
16 being I believe the final version of the government exhibit
17 list is one we worked through on your computer, Ms. Chartier.

18 *MS. CHARTIER:* Yes. So then you couldn't do that.
19 That's right. But I did send it around to everyone.

20 So would the Court like me to send it to James, or is
21 there someone in particular to --

22 *THE COURT:* So if it isn't here in hard copy, get it
23 to us somehow, but then everybody has got to bless the hard
24 copy before we walk it back there.

25 *MS. CHARTIER:* Okay. We sent an email copy of the

1 government's around to everyone.

2 **THE COURT:** Okay.

3 **MR. BAKER:** I believe all sides have agreed upon
4 those copies. We have been working on the contingency of the
5 texts, so actually maybe I'll talk to defense counsel about one
6 person reviewing that with me and we can get that done and back
7 to you in a matter of moments, Your Honor.

8 **THE COURT:** Okay. Great. Thank you.

9 **MR. BAKER:** Thank you.

10 **MS. CHARTIER:** Thank you, Your Honor.

11 **THE CLERK:** Court is in recess.

12 *(Recess taken at 11:05 a.m.)*

13 *(Back on the record at 2:24 p.m.)*

14 **THE COURT:** I have a note that the jury has reached a
15 verdict which Mr. Schmidt will publish. Is there anything we
16 need to do before bringing in the jury?

17 **MS. HOWARD:** No, Your Honor.

18 **MR. BAKER:** No, Your Honor.

19 **THE COURT:** All right. So let's bring in the jury.

20 *(Jury entered the courtroom at 2:25 p.m.)*

21 **THE COURT:** Please be seated. I have a note I think
22 from Ms. Gebauer as the foreperson of the jury. Is that right?

23 **JUROR GEBAUER:** Yes, sir.

24 **THE COURT:** And it says "We've reached a verdict."

25 And is that in fact true?

1 *JUROR GEBAUER:* Yes, sir.

2 *THE COURT:* Okay. And were all your decisions
3 unanimous?

4 *JUROR GEBAUER:* Yes, sir.

5 *THE COURT:* All right. If you would hand the verdict
6 forms to Ms. Bourque, she'll bring them up to me.

7 And what I'm going to do, because there was a
8 separate form here for each of the defendants, is read the
9 verdict as to each defendant, and then after I've read it as I
10 interpret it, Ms. Bourque is going to ask you "Was that and is
11 that your verdict?" Okay? And then we'll go around and then
12 we'll do it for the second verdict form, and we'll move around
13 until we get through all eight. All right?

14 So this is the verdict in the case of the
15 United States against Alex Castro, Count 1, conspiracy to
16 distribute and possess with the intent to distribute controlled
17 substances. The jury finds Mr. Castro guilty. And with
18 respect to heroin at a thousand grams, one kilogram or more of
19 heroin, 5,000 grams or 5 kilograms or more of cocaine, and with
20 respect to marijuana less than 50,000 grams or 50 kilograms.
21 Signed by the foreperson. Today's date.

22 And I'll ask Ms. Bourque to poll the jury on
23 Mr. Castro and ask that the verdict be published.

24 *THE CLERK:* Ms. Albonico, was that and is that your
25 verdict?

1 *JUROR ALBONICO:* Yes.

2 *THE CLERK:* Mr. Rogers, was that and is that your
3 verdict?

4 *JUROR ROGERS:* Yes.

5 *THE CLERK:* Ms. Misner, was that and is that your
6 verdict?

7 *JUROR MISNER:* Yes.

8 *THE COURT:* Let's start again. Let's start again.

9 *THE CLERK:* Sorry. Ms. Albonico, was that and is
10 that your verdict?

11 *JUROR ALBONICO:* Yes.

12 *THE CLERK:* Mr. Rogers, was that and is that your
13 verdict?

14 *JUROR ROGERS:* Yes.

15 *THE CLERK:* Ms. Misner, was that and is that your
16 verdict?

17 *JUROR MISNER:* Yes.

18 *THE CLERK:* Mr. Bennett, was that and is that your
19 verdict?

20 *JUROR BENNETT:* Yes.

21 *THE CLERK:* And Ms. Gebauer, was that and is that
22 your verdict?

23 *JUROR GEBAUER:* Yes.

24 *THE CLERK:* And Ms. Smith, was that and is that your
25 verdict?

1 *JUROR SMITH:* Yes.

2 *THE CLERK:* And Mr. Colunga, was that and is that
3 your verdict?

4 *JUROR COLUNGA:* Yes.

5 *THE CLERK:* Ms. Courtright, was that and is that your
6 verdict?

7 *JUROR COURTRIGHT:* Yes.

8 *THE CLERK:* And Ms. Martinez, was that and is that
9 your verdict?

10 *JUROR MARTINEZ:* Yes.

11 *THE CLERK:* Ms. Bowles, was that and is that your
12 verdict?

13 *JUROR BOWLES:* Yes.

14 *THE CLERK:* And Mr. Wood, was that and is that your
15 verdict?

16 *JUROR WOOD:* Yes.

17 *THE CLERK:* And Ms. Parsell, was that and is that
18 your verdict?

19 *JUROR PARSELL:* Yes.

20 *THE COURT:* All right. Moving, then, to the case of
21 the United States against Michael Nelson. With respect to
22 Count 1, conspiracy to distribute and possess with the intent
23 to distribute controlled substances, the jury finds Mr. Nelson
24 not guilty.

25 With respect to Count 5, possession with the intent

1 to distribute cocaine on or about July 25, 2017, the jury finds
2 Mr. Nelson not guilty.

3 And with respect to Count 10, possession with the
4 intent to distribute cocaine on or about August 11, 2017, the
5 jury finds Mr. Nelson not guilty.

6 Would you please poll the jury, and we'll publish
7 that verdict form.

8 *THE CLERK:* Ms. Albonico, was that and is that your
9 verdict?

10 *JUROR ALBONICO:* Yes.

11 *THE CLERK:* Mr. Rogers, was that and is that your
12 verdict?

13 *JUROR ROGERS:* Yes.

14 *THE CLERK:* Ms. Misner, were those and are those your
15 verdicts?

16 *JUROR MISNER:* Yes.

17 *THE CLERK:* And Mr. Bennett, were those and are those
18 your verdicts?

19 *JUROR BENNETT:* Yes.

20 *THE CLERK:* And Ms. Gebauer, were those and are those
21 your verdicts?

22 *JUROR GEBAUER:* Yes.

23 *THE CLERK:* And Ms. Smith, were those and are those
24 your verdicts?

25 *JUROR SMITH:* Yes.

1 *THE CLERK:* And Mr. Colunga, were those and are those
2 your verdicts?

3 *JUROR COLUNGA:* Yes.

4 *THE CLERK:* And Ms. Courtright, were those and are
5 those your verdicts?

6 *JUROR COURTRIGHT:* Yes.

7 *THE CLERK:* And Ms. Martinez, were those and are
8 those your verdicts?

9 *JUROR MARTINEZ:* Yes.

10 *THE CLERK:* And Ms. Bowles, were those and are those
11 your verdicts?

12 *JUROR BOWLES:* Yes.

13 *THE CLERK:* And Mr. Wood, were those and are those
14 your verdicts?

15 *JUROR WOOD:* Yes.

16 *THE CLERK:* And Ms. Parsell, were those and are those
17 your verdicts?

18 *JUROR PARSELL:* Yes.

19 *THE COURT:* Thank you.

20 Turning to the case of the United States against
21 Solon Tatum, with respect to Count 1, conspiracy to distribute
22 and possess with intent to distribute controlled substances,
23 the jury finds Mr. Tatum guilty. The jury does not find heroin
24 involved but finds less than 500 grams of cocaine involved in
25 the conspiracy.

1 Turning to Count 2, possession with the intent to
2 distribute cocaine on or about July 14, 2017, the jury finds
3 Mr. Tatum not guilty.

4 With respect to Count 3, possession with the intent
5 to distribute cocaine on or about July 18, 2017, the jury finds
6 Mr. Tatum guilty and does that with respect to 500 -- or rather
7 less than 500 grams of cocaine.

8 Please poll the jury on Mr. Tatum, and we'll publish
9 the verdict form.

10 *THE CLERK:* Ms. Albonico, were those and are those
11 your verdicts?

12 *JUROR ALBONICO:* Yes.

13 *THE CLERK:* Mr. Rogers, were those and are those your
14 verdicts?

15 *JUROR ROGERS:* Yes.

16 *THE CLERK:* Ms. Misner, were those and are those your
17 verdicts?

18 *JUROR MISNER:* Yes.

19 *THE CLERK:* Mr. Bennett, were those and are those
20 your verdicts?

21 *JUROR BENNETT:* Yes.

22 *THE CLERK:* Ms. Gebauer, were those and are those
23 your verdicts?

24 *JUROR GEBAUER:* Yes.

25 *THE CLERK:* And Ms. Smith, were those and are those

1 your verdicts?

2 *JUROR SMITH:* Yes.

3 *THE CLERK:* And Mr. Colunga, were those and are those
4 your verdicts?

5 *JUROR COLUNGA:* Yes.

6 *THE CLERK:* And Ms. Courtright, were those and are
7 those your verdicts?

8 *JUROR COURTRIGHT:* Yes.

9 *THE CLERK:* And Ms. Martinez, were those and are
10 those your verdicts?

11 *JUROR MARTINEZ:* Yes.

12 *THE CLERK:* And Ms. Bowles, were those and are those
13 your verdicts?

14 *JUROR BOWLES:* Yes.

15 *THE CLERK:* And Mr. Wood, were those and are those
16 your verdicts?

17 *JUROR WOOD:* Yes.

18 *THE CLERK:* And Ms. Parsell, were those and are those
19 your verdicts?

20 *JUROR PARSELL:* Yes.

21 *THE COURT:* Moving to the case of the United States
22 against Dante Howard, with respect to Count 1, conspiracy to
23 distribute and possess with the intent to distribute controlled
24 substances, the jury finds Mr. Howard guilty, does not find
25 heroin involved but finds less than 500 grams of cocaine

1 involved and less than 50,000 grams or 50 kilograms of
2 marijuana.

3 Would you please poll the jury on the verdict
4 involving Mr. Howard.

5 *THE CLERK:* Ms. Albonico, were those and are those
6 your verdicts?

7 *JUROR ALBONICO:* Yes.

8 *THE CLERK:* Mr. Rogers, were those and are those your
9 verdicts?

10 *JUROR ROGERS:* Yes.

11 *THE CLERK:* Ms. Misner, were those and are those your
12 verdicts?

13 *JUROR MISNER:* Yes.

14 *THE CLERK:* Mr. Bennett, were those and are those
15 your verdicts?

16 *JUROR BENNETT:* Yes.

17 *THE CLERK:* Ms. Gebauer, were those and are those
18 your verdicts?

19 *JUROR GEBAUER:* Yes.

20 *THE CLERK:* And Ms. Smith, were those and are those
21 your verdicts?

22 *JUROR SMITH:* Yes.

23 *THE CLERK:* And Mr. Colunga, were those and are those
24 your verdicts?

25 *JUROR COLUNGA:* Yes.

1 *THE CLERK:* And Ms. Courtright, were those and are
2 those your verdicts?

3 *JUROR COURTRIGHT:* Yes.

4 *THE CLERK:* And Ms. Martinez, were those and are
5 those your verdicts?

6 *JUROR MARTINEZ:* Yes.

7 *THE CLERK:* And Ms. Bowles, were those and are those
8 your verdicts?

9 *JUROR BOWLES:* Yes.

10 *THE CLERK:* And Mr. Wood, were those and are those
11 your verdicts?

12 *JUROR WOOD:* Yes.

13 *THE CLERK:* And Ms. Parsell, were those and are those
14 your verdicts?

15 *JUROR PARSELL:* Yes.

16 *THE COURT:* Thank you.

17 Turning to the case of the United States against
18 Erika Atkinson, with respect to Count 1, conspiracy to
19 distribute and possess with the intent to distribute controlled
20 substances, the jury finds Ms. Atkinson not guilty.

21 With respect to Count 11, possession with the intent
22 to distribute heroin on or about August 13, 2017, the jury
23 finds Ms. Atkinson guilty with less than 100 grams of heroin.

24 Would you please poll the jury with respect to
25 Ms. Atkinson.

1 *THE CLERK:* Ms. Albonico, were those and are those
2 your verdicts?

3 *JUROR ALBONICO:* Yes.

4 *THE CLERK:* Mr. Rogers, were those and are those your
5 verdicts?

6 *JUROR ROGERS:* Yes.

7 *THE CLERK:* Ms. Misner, were those and are those your
8 verdicts?

9 *JUROR MISNER:* Yes.

10 *THE CLERK:* Mr. Bennett, were those and are those
11 your verdicts?

12 *JUROR BENNETT:* Yes.

13 *THE CLERK:* Ms. Gebauer, were those and are those
14 your verdicts?

15 *JUROR GEBAUER:* Yes.

16 *THE CLERK:* And Ms. Smith, were those and are those
17 your verdicts?

18 *JUROR SMITH:* Yes.

19 *THE CLERK:* And Mr. Colunga, were those and are those
20 your verdicts?

21 *JUROR COLUNGA:* Yes.

22 *THE CLERK:* And Ms. Courtright, were those and are
23 those your verdicts?

24 *JUROR COURTRIGHT:* Yes.

25 *THE CLERK:* And Ms. Martinez, were those and are

1 those your verdicts?

2 *JUROR MARTINEZ:* Yes.

3 *THE CLERK:* And Ms. Bowles, were those and are those
4 your verdicts?

5 *JUROR BOWLES:* Yes.

6 *THE CLERK:* And Mr. Wood, were those and are those
7 your verdicts?

8 *JUROR WOOD:* Yes.

9 *THE CLERK:* And Ms. Parsell, were those and are those
10 your verdicts?

11 *JUROR PARSELL:* Yes.

12 *THE COURT:* And then with respect to the case of the
13 United States against Max Avery, as to Count 1, conspiracy to
14 distribute and possess with the intent to distribute controlled
15 substances, the jury finds Mr. Avery not guilty.

16 With respect to Count 12, possession with the intent
17 to distribute heroin on or about September 1, the jury finds
18 Mr. Avery not guilty.

19 Would you please poll the jury with respect to
20 Mr. Avery.

21 *THE CLERK:* Ms. Albonico, were those and are those
22 your verdicts?

23 *JUROR ALBONICO:* Yes.

24 *THE CLERK:* Mr. Rogers, were those and are those your
25 verdicts?

1 *JUROR ROGERS:* Yes.

2 *THE CLERK:* Ms. Misner, were those and are those your
3 verdicts?

4 *JUROR MISNER:* Yes.

5 *THE CLERK:* Mr. Bennett, were those and are those
6 your verdicts?

7 *JUROR BENNETT:* Yes.

8 *THE CLERK:* Ms. Gebauer, were those and are those
9 your verdicts?

10 *JUROR GEBAUER:* Yes.

11 *THE CLERK:* And Ms. Smith, were those and are those
12 your verdicts?

13 *JUROR SMITH:* Yes.

14 *THE CLERK:* And Mr. Colunga, were those and are those
15 your verdicts?

16 *JUROR COLUNGA:* Yes.

17 *THE CLERK:* And Ms. Courtright, were those and are
18 those your verdicts?

19 *JUROR COURTRIGHT:* Yes.

20 *THE CLERK:* And Ms. Martinez, were those and are
21 those your verdicts?

22 *JUROR MARTINEZ:* Yes.

23 *THE CLERK:* And Ms. Bowles, were those and are those
24 your verdicts?

25 *JUROR BOWLES:* Yes.

1 *THE CLERK:* And Mr. Wood, were those and are those
2 your verdicts?

3 *JUROR WOOD:* Yes.

4 *THE CLERK:* And Ms. Parsell, were those and are those
5 your verdicts?

6 *JUROR PARSELL:* Yes.

7 *THE COURT:* Turning to the case of the United States
8 against Andrea Thompson, with respect to Count 1, conspiracy to
9 distribute and possess with the intent to distribute controlled
10 substances, the jury finds Ms. Thompson guilty and does so with
11 respect to heroin as the controlled substance.

12 Would you please poll the jury and we'll publish that
13 verdict form.

14 *THE CLERK:* Ms. Albonico, were those and are those
15 your verdicts?

16 *JUROR ALBONICO:* Yes.

17 *THE CLERK:* Mr. Rogers, were those and are those your
18 verdicts?

19 *JUROR ROGERS:* Yes.

20 *THE CLERK:* Ms. Misner, were those and are those your
21 verdicts?

22 *JUROR MISNER:* Yes.

23 *THE CLERK:* Mr. Bennett, were those and are those
24 your verdicts?

25 *JUROR BENNETT:* Yes.

1 *THE CLERK:* Ms. Gebauer, were those and are those
2 your verdicts?

3 *JUROR GEBAUER:* Yes.

4 *THE CLERK:* And Ms. Smith, were those and are those
5 your verdicts?

6 *JUROR SMITH:* Yes.

7 *THE CLERK:* And Mr. Colunga, were those and are those
8 your verdicts?

9 *JUROR COLUNGA:* Yes.

10 *THE CLERK:* And Ms. Courtright, were those and are
11 those your verdicts?

12 *JUROR COURTRIGHT:* Yes.

13 *THE CLERK:* And Ms. Martinez, were those and are
14 those your verdicts?

15 *JUROR MARTINEZ:* Yes.

16 *THE CLERK:* And Ms. Bowles, were those and are those
17 your verdicts?

18 *JUROR BOWLES:* Yes.

19 *THE CLERK:* And Mr. Wood, were those and are those
20 your verdicts?

21 *JUROR WOOD:* Yes.

22 *THE CLERK:* And Ms. Parsell, were those and are those
23 your verdicts?

24 *JUROR PARSELL:* Yes.

25 *THE COURT:* And turning to the case of the

1 United States against Aaron Cox, as to Count 1, conspiracy to
2 distribute and possess with the intent to distribute controlled
3 substances, the jury finds Mr. Cox not guilty.

4 With respect to Count 14, possession with the intent
5 to distribute cocaine on or about September 2, 2017, the jury
6 finds Mr. Cox not guilty.

7 Would you please poll the jury as to Mr. Cox and I'll
8 publish the verdict form. Thank you.

9 *THE CLERK:* Ms. Albonico, were those and are those
10 your verdicts?

11 *JUROR ALBONICO:* Yes.

12 *THE CLERK:* Mr. Rogers, were those and are those your
13 verdicts?

14 *JUROR ROGERS:* Yes.

15 *THE CLERK:* Ms. Misner, were those and are those your
16 verdicts?

17 *JUROR MISNER:* Yes.

18 *THE CLERK:* Mr. Bennett, were those and are those
19 your verdicts?

20 *JUROR BENNETT:* Yes.

21 *THE CLERK:* Ms. Gebauer, were those and are those
22 your verdicts?

23 *JUROR GEBAUER:* Yes.

24 *THE CLERK:* And Ms. Smith, were those and are those
25 your verdicts?

1 *JUROR SMITH:* Yes.

2 *THE CLERK:* And Mr. Colunga, were those and are those
3 your verdicts?

4 *JUROR COLUNGA:* Yes.

5 *THE CLERK:* And Ms. Courtright, were those and are
6 those your verdicts?

7 *JUROR COURTRIGHT:* Yes.

8 *THE CLERK:* And Ms. Martinez, were those and are
9 those your verdicts?

10 *JUROR MARTINEZ:* Yes.

11 *THE CLERK:* And Ms. Bowles, were those and are those
12 your verdicts?

13 *JUROR BOWLES:* Yes.

14 *THE CLERK:* And Mr. Wood, were those and are those
15 your verdicts?

16 *JUROR WOOD:* Yes.

17 *THE CLERK:* And Ms. Parsell, were those and are those
18 your verdicts?

19 *JUROR PARSELL:* Yes.

20 *THE COURT:* All right. Thank you. That concludes
21 the recital of the verdicts, and that means that we're finished
22 with the case and we're at that point where obviously people at
23 different positions in the courtroom feel differently about the
24 way everything came out. That's what we predicted would happen
25 at the beginning of the case, and that happens with every

1 decision that's made in court.

2 I always tell my family I make decisions all day and
3 every one I make aggravates at least somebody. And now as
4 jurors, you share that burden of judgment with me. You came
5 here a little over two weeks ago, stepped outside of what you
6 do day-to-day, willingly took on the mantle of juror, and I
7 thank you for that. I thank you on behalf of the parties for
8 that, I thank you on behalf of the entire judiciary for that,
9 and the communities in which you all live. Because I continue
10 to believe that what makes our system of criminal justice, and
11 more generally justice on the civil or criminal side, as
12 effective and as accepted as it is is the work of people like
13 you that ultimately weigh and decide these cases and reach a
14 judgment by unanimous consent based on all of the things that
15 you saw and heard here in court. So I thank you for that.

16 I thank you for your attention and your work. And
17 now I'm going to send you on your way because your job as
18 jurors is over. I'm going to release you from that
19 responsibility. I'm going to do the same thing with the
20 alternates who I know were in the back of the courtroom for the
21 verdict.

22 Your role is quite different as it turns out as
23 jurors. You wound up not having that discharge, that ability
24 to negotiate and talk with your fellow jurors, and that's a
25 whole different kind of burden, but one that I thank you for

1 bearing. Also critical and important to the system. And all
2 of you, all 14 of you, are now free never to listen to me
3 again. You can walk out of here and you don't have to listen
4 to me.

5 I hope before you leave if you have time you'll let
6 me greet you and thank you personally in the back. And if you
7 don't, you can just get on your way. You're free to go.
8 You're free to talk to anybody or nobody about your experience
9 here. It's entirely up to you. But all those instructions I
10 gave you about not talking to other people, they are done now.
11 You can talk to anybody or nobody as you wish.

12 And similarly, if you want to go out there and spend
13 a lot of time on the internet or whatever other source you have
14 finding out about the things that I didn't let you find out
15 about earlier, then go for it. All of that is over and done.
16 Your service is finished. And I thank you once again. I hope
17 that I'll have a chance to thank you personally. And that
18 includes the alternates if you have time before you go. I have
19 a few more things to take care of here with the parties, but
20 I'm going to excuse you now with our thanks.

21 *(Jury exited the courtroom at 2:38 p.m.)*

22 **THE COURT:** All right. We have some bond decisions
23 to make, I think. At least by my notes. Mr. Nelson had been
24 detained, and given the jury's verdict of acquittal, I think he
25 would have to be discharged at this point.

1 Does the government know or do the marshals know if
2 there's any detainer or anything that would stand in the way of
3 releasing Mr. Nelson?

4 **MR. BAKER:** Your Honor, I'm not aware of one.

5 **THE COURT:** Okay. The marshals are unaware. So
6 Mr. Nelson will be discharged. And I'm sure that you'll still
7 have to go through some processing to make sure that the
8 marshals sign you out, but they will do that. But you should
9 be free to go and discharged.

10 I believe that there were several people on bond that
11 were convicted of at least one charge that would under 3142 and
12 3143 be a mandatory remand offense, so I'll talk about that in
13 a minute and give the parties affected a chance to address it.
14 And I believe that the other complete acquittal involved
15 Mr. Cox who is on bond; is that right? Okay.

16 **MR. HILLS:** On tether.

17 **THE COURT:** So Mr. Cox would be discharged as well.
18 And, again, does the government know of any detainer involving
19 Mr. Cox?

20 **MR. BAKER:** I'm not aware of one.

21 **THE COURT:** Okay. So, Mr. Cox, you'll be discharged
22 as well and discharged from the bond.

23 With respect to, first of all, Mr. Tatum, who is on
24 bond, is the government going to be recommending no sentence of
25 imprisonment?

1 **MR. BAKER:** No, Your Honor.

2 **THE COURT:** Okay. So, Ms. Chartier, do you want to
3 be heard on what I would normally do, which is revoke bond at
4 this point?

5 **MS. CHARTIER:** Thank you, Your Honor. Mr. Tatum has
6 been on bond for approximately a year on a GPS tether. He's
7 had no bond violations. He's currently working on the weekend.
8 He cares for his elderly father who has dementia. I would ask
9 the Court to allow Mr. Tatum to remain in his current situation
10 on tether under house arrest until sentencing.

11 **THE COURT:** All right. Well, the Court typically
12 applies 3142 and 3143 when there's been a conviction or an
13 adjudication of guilt, as there has been in this case, of a
14 qualifying offense, which includes a controlled substance
15 offense that carries the penalty ranges in play here. The only
16 potential exceptions to that that are built into the statute
17 would involve the government recommending no sentence of
18 imprisonment or there being a substantial showing of something
19 likely to result in a reversal or order for new trial, which I
20 don't see at this point.

21 To the extent there's any power under 3145(c) for the
22 Court at the district level to apply the appellate standard,
23 and the Sixth Circuit suggested there may be, the showing would
24 have to be of exceptional reasons why the mandatory remand
25 shouldn't apply, and I don't think that there are exceptional

1 reasons articulated with respect to Mr. Tatum.

2 The circuit, although it has recognized in theory the
3 possibility of exceptional reasons, it hasn't actually found
4 any in practice, and so I'm going to go ahead and revoke the
5 bond under those provisions and detain Mr. Tatum.

6 In terms of Ms. Atkinson, I think she's next. Do you
7 want to be heard? Again, is the government going to be
8 recommending no sentence of imprisonment?

9 **MR. BAKER:** No, Your Honor, the government will be
10 requesting a sentence of imprisonment.

11 **THE COURT:** All right. Then go ahead, Ms. Howard.

12 **MS. HOWARD:** Thank you, Your Honor. My client has
13 also been on a tether under house arrest for the past several
14 months. She -- there was a notice of bond violation hearing
15 that just came through today regarding consumption of alcohol.
16 The probation officer did not recommend a revocation based on
17 that.

18 Based on the vote to convict, given that it's the
19 less serious charge, we would ask that Your Honor continue her
20 on her current bond. She works full-time third shift. She's
21 been seeing a drug counselor. And other than the recent slipup
22 with the alcohol consumption, we think that she's done well on
23 bond, and we would ask that she be continued, Your Honor.

24 **THE COURT:** All right. With respect to Ms. Atkinson,
25 the same provisions, 3142 and 3143, would be in play, even with

1 respect to the charge on which she was convicted because it's
2 applied based on the maximum potential penalty not the minimum.
3 And, again, in the case of Ms. Atkinson I don't see anything
4 that would fall within the statutory exceptions under 3143, nor
5 do I see anything that would amount to exceptional reasons
6 under 3145(c), so I am going to revoke the bond for
7 Ms. Atkinson as well and detain her under those provisions.

8 *MS. HOWARD:* Okay. Thank you, Your Honor.

9 *THE COURT:* All right. I skipped over Mr. Avery last
10 time. I'm sorry about that. He's detained but was acquitted
11 on all of the charges.

12 Does the government know of any detainer involving
13 Mr. Avery?

14 *MR. BAKER:* I do not, Your Honor.

15 *THE COURT:* Mr. Frawley?

16 *MR. FRAWLEY:* I'm not aware of any.

17 *THE COURT:* So, Mr. Avery, as in the case of Mr. Cox
18 and Mr. Nelson, you'll be discharged. And again you'll have to
19 go through the processing, but from the Court's point of view
20 you'd be discharged at this point.

21 That takes us to Ms. Thompson and Mr. Turpel. Well,
22 let me ask the government first, will you be seeking no
23 sentence of imprisonment?

24 *MR. BAKER:* We will, Your Honor -- we will be seeking
25 a sentence of detention, Your Honor.

1 **THE COURT:** All right. Go ahead, Mr. Turpel.

2 **MR. TURPEL:** Your Honor, Ms. Thompson has been on
3 bond and cooperated with the probation office,
4 Pretrial Services, for almost 11 months. It's my understanding
5 from her probation officer that if she could, she would
6 recommend that Ms. Thompson stay out. She works. I believe
7 she's at zero or one point on her prior record. I'd ask the
8 Court to consider an exception in this matter.

9 **THE COURT:** All right. And I'm going to have the
10 same ruling with respect to Ms. Thompson. I don't think
11 there's any statutory exception in play under 3143, and I don't
12 see exceptional circumstances or reasons under 3145(c), so I'm
13 going to apply the mandatory remand with respect to
14 Ms. Howard -- I'm sorry -- Ms. Thompson as well and revoke her
15 bond.

16 I think that takes care of all of the either
17 discharge or revocation decisions. Am I missing anything from
18 any party's perspective on that?

19 **MR. BAKER:** Not from the government's perspective,
20 Your Honor.

21 **THE COURT:** Or any defendant's?

22 **MR. FRAWLEY:** No, Your Honor.

23 **THE COURT:** All right. Is there anything else from
24 the parties' perspective that we need to take care of today?

25 **MR. BAKER:** Not from the government.

1 *THE COURT:* Or from any of the defendants'
2 perspectives?

3 *MS. HOWARD:* No, Your Honor.

4 *MS. CHARTIER:* No, Your Honor.

5 *MR. LOMBARD:* Will the court issue a sentencing date
6 or will you set up one today?

7 *THE COURT:* I'm sorry?

8 *MR. LOMBARD:* Will the court issue a sentencing date
9 or will you set one?

10 *THE COURT:* We will not set it right now, but we will
11 set it. And I don't know how long out it will be. Three or
12 four months probably. And for any of the defendants who have a
13 conviction, we'll follow our normal presentence process which
14 will be a probation officer who generates a written
15 presentence report, gets it out to all counsel in advance.
16 Once the document goes through that, it comes back to me as a
17 final document. That's the first time I'll see it. And if you
18 have objections, obviously you'll raise them with your lawyers
19 and bring it to the sentencing hearing and I'll resolve it
20 there.

21 Okay. Other questions or comments? All right.
22 Again I want to thank the lawyers. I know everybody leaves
23 with a mix of emotions. Some worse than others. But from a
24 perspective of the system working, I continue to believe that
25 all the lawyers sitting in all those chairs did an outstanding

1 job framing the issues for the parties -- or for the jurors
2 rather -- on behalf of their respective clients. And although
3 I think I said this a day or two ago, I didn't really expect to
4 enjoy the process, but I have to say I did. I thought that it
5 was an excellent piece of advocacy all around, and I appreciate
6 the opportunity to have been the presiding judge at such a
7 proceeding.

8 So with that, we will be in recess. We'll record the
9 verdicts, obviously, as the jury determined them.

10 **THE CLERK:** Court is in recess.

11 *(Proceeding concluded at 2:48 p.m.)*

12 * * * * *

13 I certify that the foregoing is a correct transcript
14 from the record of proceedings in the above-entitled matter.

15 I further certify that the transcript fees and format
16 comply with those prescribed by the court and the Judicial
17 Conference of the United States.

18

19 Date: May 1, 2019

20

21 **/s/ Glenda Trexler**

22

Glenda Trexler, CSR-1436, RPR, CRR

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